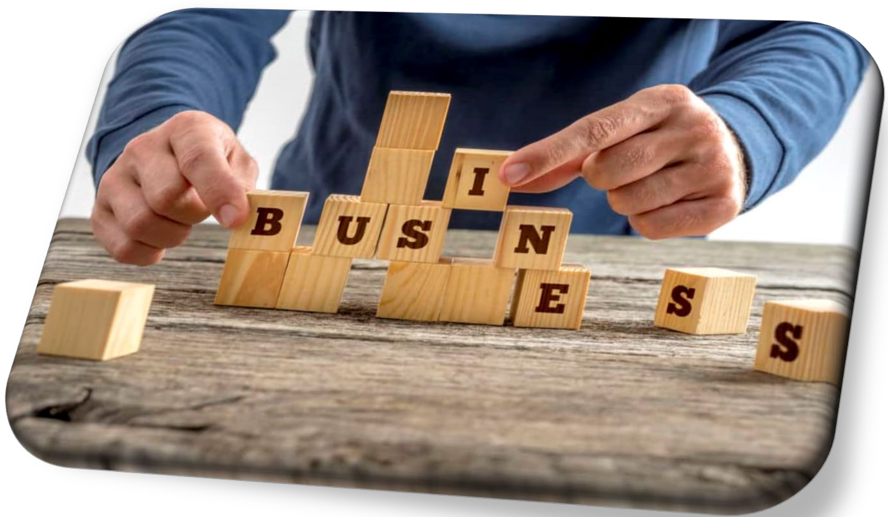
Ledgers Guide to Business Structures



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Overview

This information circular will outline the benefits and disadvantages of incorporation as well as defining the different types of business classifications available to Canadians. Determining what type of business structure is critical and not a simple task and requires professional assistance. Use this guide to understand the advantages and disadvantages of each business structure, then consult a Ledgers Professional for their assistance in completing the setup and registration of your business.

This guide will be separated into the following sections:

- Types of Business Structures
- Advantages and Disadvantages
- Federal vs. Provincial Incorporation
- Name vs. Number Corporation
- Registration Requirements
- Incorporation Fees
- Agreements and Contracts
- Books and Records
- Other Registration Requirements
- 10 Steps to Success

Although there are many different types of business structures, this guide will deal with Proprietorships and Corporations only.

THIS GUIDE IS FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT CONSTITUE LEGAL OR ACCOUNTING ADVICE. BEFORE YOU MAKE ANY DECISIONS CONSULT THE APPROPRIATE PROFESSIONALS

This guide is divided into sections for each relevant topic, ***The Table of Contents references are active links,*** in other words, if you click on a line in the Table of Contents, it will take you to that page.

Sections of this manual may refer to Interpretation bulletins, CRA tax guides, Forms and other materials. When possible, a referred guide or form may be accessed by clicking on the referenced hyperlink. These links in most cases will refer you to a web page; therefore, your Internet connection should be active.
Example link: (CRA Interpretation Bulletin IT-221R3)

What is a Business?
(more information)

A business is an activity carried on by a person or persons, with the intention of earning a profit, and where there is evidence to support the intention. A Business may include:

- A Profession
- A Calling
- A Trade
- A Manufacturer
- An Undertaking of Any Kind
- An Adventure or concern in the nature of trade.

Types of Business Structures

There are many different types of business structures that can be adopted in Canada, the following is a list of the most common structures and each will be further described later in this guide.

- Proprietorship
- Partnership
- Limited Partnership
- Limited Liability Partnership (LLP)
- Joint Ventures
- Canadian Controlled Private Corporation (CCPC)
- Public Corporation
- Professional Corporations
- Not for Profit Organization
- Charitable Organization
- Other Types of Corporations

Proprietorship

A proprietorship is an unincorporated business entity entirely owned by an individual, resident of Canada. Examples of a typical proprietorship would include:

- A bookkeeper, operating from their home part-time to earn extra income.
- A handyman, operating from their home part-time to earn extra income.

A proprietorship is likely the most common form of business structure in Canada.

Income from a proprietorship is reported on the individuals tax return and is generally not subject to many additional provincial or federal rules, with the exception of proper financial reporting on the tax returns. The Sole Proprietorship is the simplest form of operating a business. Only one person is responsible for decision making and therefore earns all of the profits or incurs all of the losses of the business, however, the same individual also incurs all of the risk and obligations associated with running a business.

Partnership
(more information)

A partnership is generally the relationship between 2 or more persons who conduct a business in common, with the belief and intention of earning a profit. A Partnership can be created and conducted without an written agreement between the parties, although it is not advisable. To determine if 2 or more individuals are in a partnership, they must first determine the extent of their involvement in the business and Provincial laws and regulations surrounding partnerships. Some items to be considered when forming, changing or dissolving a partnership include:

- Whether or not the relationship is a partnership
- Special rules about capital gains and losses
- Recapture rules surrounding Capital Cost Allowance when properties are given to a partnership
- Special rules relating to the dissolution of a partnership
- Special rules surrounding the sale or disposal of your interest in a partnership

Limited Partnership

A limited partnership has virtually the same definition as a partnership, with the following addition:

In a Limited Partnership, one or more ‘general" partners manage the business while "limited" partners contribute capital and share in the profits but take no part in running the business. General partners remain personally liable for partnership debts while limited partners incur no liability with respect to partnership obligations beyond their capital contributions. The purpose of this form of business is to encourage investors to invest without risking more than the capital they have contributed.

Limited Liability Partnership

A Limited Liability Partnership (LLP) is the same as a Limited Partnership with the following addition:

The principals (partners) of a LLP are generally professionals such as Accountants and Lawyers. The LLP designation essentially protects the personal assets of the individual partners, limiting their risk to the capital that they have individually contributed

Joint Ventures

A Joint Venture is a general partnership that is typically formed to undertake a particular business transaction as opposed to carrying on indefinitely. Most often, joint ventures are used in real estate and similar matters where 2 or more people undertake to develop a specific piece of property.

Canadian Controlled Private Corporation

A Canadian Controlled Private Corporation (CCPC), also known as a Corporation or Company, will have Limited, Inc. etc. after their name. A corporation is an entirely separate legal entity and is treated as having its own legal personality, which is distinct from its owners, (Shareholders) and the individuals responsible for running the Corporation (Officers and Directors). To qualify as a CCPC, the shareholders of the Corporation must be Canadian Residents.

Each Corporation is comprised of Shareholders, as the name implies, these individuals (and sometimes other corporations, trusts, or partnerships) own the shares of the Corporation. The Shareholders, by utilizing the votes attached to the shares effectively control the Corporation. If there is only one Shareholder, that person or entity has absolute control of the Corporation. Where a Corporation has two or more shareholders, control is generally determined by the ratio of the individual's shares to the total number of shares issued by the Corporation.

The Shareholders do not directly manage or operate the Corporation; they exercise their influence by electing and / or removing Officers and Directors and by voting on major corporate decisions. Officers and Directors of a Corporation do not have to be shareholders of the Corporation, but they are responsible for handling the supervising and administration of the Corporations affairs.

Organization of a CCPC

Shareholders — Owners of the Corporation, elect the Officers and Directors

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Officers / Directors — Responsible for issuing instructions for the day-to-day operation of the Corporation

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Management — Responsible for ensuring the instructions of the Officers and Directors are carried out

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Employees — Provide the services, and Labour required to operate the Corporation as instructed by management

A Corporation does not necessarily have to be this complex, and in many instances the same individual holds all of the positions.

To be considered a CCPC, the Corporation must meet all of the following requirements:

- It is a private (not publicly held) Corporation
- It is a Corporation that meets the Canadian Residency Rules
- It is not controlled either directly or indirectly by a non-resident
- It is not controlled either directly or indirectly by a Public Corporation

Public Corporation

A Public Corporation is a corporation that is resident in Canada and meets either of the following conditions:

- It has a class of shares listed on a prescribed Canadian Stock Exchange
- It has elected, or the Minister of National Revenue has designated it to be a Public Corporation as the corporation has complied with very specific rules under the Income Tax Act.

Examples of Public Corporations are: Nortel, BCE, Microsoft etc.

Professional Corporations

A Professional Corporation is one where the Corporation is engaged in the practice of providing professional services, where those services are governed by a Professional Organization or governing body. The governing body must allow for its members to practice in a Corporation, and the body may also have specific rules and regulations for its members to observe when incorporating. Generally professions that may incorporate, depending on other provincial regulations are: Accountants, Lawyers, Physicians, Veterinarians, Dentists and Engineers.

Not for Profit Corporation

A Not For Profit Corporation (NPC), as its name implies is a legal entity, formed for purposes other than to generate a profit for its members or shareholders. A NPC may earn a profit, however, the profits must be used to further benefit the organization rather than to pay dividends to its members or shareholders. Some examples of NPC's may include: Churches, Chambers of Commerce, Professional Associations, Sports Associations etc. The Canadian Federation of Independent Business, and the Canadian Taxpayers Association would be recognizable NPO Corporations.

Charitable Organizations

A Charitable Organization is essentially a Not For Profit Corporation that has applied for and received recognition from the Canada Revenue Agency as a Charity. The main benefit of being registered as a Charity with CRA, is that the corporation can issue Charitable Donation Receipts to donors for income tax purposes. There are also some tax exemptions and other benefits available to registered charities. To be recognized as a charitable corporation, the business must fall into one of the categories below:

- The Corporation is involved in the business of relieving poverty

- The Corporation is involved in the business of furthering education
- The Corporation is involved in the business of advancing religion
- The Corporation in involved in the business of providing community services that are considered by the courts to be charitable.

Other Types of Corporations

There are many other types of Corporations, the most common types may include:

- Credit Unions
- Non-resident investment corporations
- Crown Corporations
- Venture Capital Corporations

Advantages and Disadvantages

This section will take a look at very specific advantages and disadvantages for incorporating. Note, for this guide we are only comparing Private Corporations (CCPC) with Proprietorships.

Advantages of Incorporation

Corporations
Potential for tax deferral as a Corporation generally pays less tax on income than an individual person would
A Corporation also has the ability to carry forward losses of previous years to offset any future earnings
A Corporation may be used to split income with family members, whom are often taxed at a lower rate than that of the individual managing the business. However, the amounts paid to family members must be reasonable and in direct relation to the work performed.
A spouse (or other family member) of a Shareholder may subscribe to shares of the Corporation and therefore receive Dividends. This would be advantageous if the spouse (or other family member) did not work for the Corporation and could therefore not be paid a salary.
A Corporation may be used to freeze an estate, whereby the individual converts growth property to property whose value will remain stable. This is advantageous when planning to minimize taxes upon the death of a shareholder as well as for transferring the business to other family members.
A Corporation may pay *nontaxable* ***benefits to employees such as:*** • ***Life and disability insurance premiums*** • ***Premiums to a private group insurance plan***

• ***Death Benefits*** • ***Retiring Allowances*** • ***Tax Free, non-cash gifts***
Several Provinces offer tax holidays to Corporations providing that certain conditions are met.
The sale of Qualifying Small Business Shares are eligible for the Capital Gains Deduction
Corporations are considered separate legal entities, and as such, the Shareholders, Officers and Directors of the Corporation are generally not liable for the debts and obligations of the Corporation. However, Directors and Officers of a Corporation may be required to personally guarantee debts and obligations of the Corporation and may also be liable for consumption and other sales taxes. (Directors Liability)
A Corporation will continue in perpetuity, or until such time as it is dissolved or becomes bankrupt or amalgamated with another Corporation
A Corporation will generally have greater access to capital, as it can offer different issues of shares, or other types of securities to potential investors.
Incorporation may add credibility and prestige to the name of a business
A Corporation does not have to use the Calendar Year as the fiscal period

Disadvantages of Incorporation

Corporations
Incorporating a company can require Accounting, Legal and other professional assistance, all come at a price.
Corporations can be subject to additional taxes such as Capital Tax and special Federal Taxes
For a Corporation to take advantage of potential tax savings, the profits of the Corporation must remain in the business
Losses incurred in a Corporation can not be used to reduce the taxable income of the shareholders
The potential for double taxation exists when a corporation makes a profit in excess of the amount that is eligible for the small business deduction. In this case the amount in excess is taxed at full corporate rates.
The transfer of an unincorporated business to a Corporation can become a taxable transaction unless certain rollover provisions of the Income Tax Act are used. Canada Revenue Agency has been known to audit unincorporated businesses that have been operating within a Corporation
Corporations are required to follow strict rules relating to certain employee benefits such as shareholder loans and the use of company vehicles
Corporations are closely regulated and are subject to Federal, Provincial and potentially municipal reporting requirements. The additional paper burden can be cumbersome
Directors Liability provisions for certain taxes, GST, Retail Sales Tax, Payroll Withholdings etc., can virtually eliminate the limited liability advantages of a Corporation
Banks and other credit facilities will generally require personal guarantees on debt from the shareholders or directors of a small corporation. Again, this reduces the limited liability advantages of incorporating.
Double taxation of dividends. The Corporation, in order to distribute earnings to the shareholders must declare and issue dividends. Dividends can only be paid when the Corporation has a profit. The Corporation has already paid income tax on the profits, and now the shareholders receiving the dividends will have to pay income tax on the dividends they received
A Corporation must have shareholders, directors and offices. A single person can hold more than one or all of the positions, but there are additional reporting requirements, meeting requirements and minute books and other records.
Possibility of conflict between shareholders, leading to disruption or dissolution of the business

Advantages of a Proprietorship

Proprietorships
A Proprietorship is relatively simple to establish. A person may operate a business in their name without many registration or other requirements
Business Losses arising from a proprietorship may be used to offset or reduce the taxable income earned from other areas such as employment or investment income
Income from the business is reported on the individuals personal tax return, and does not require complex details and calculations
Extension of personal tax return due date. An individual earning income from self-employment does not have to file their personal tax return until June 15th of the following year, however, if taxes are owing, interest accrues from April 30th.
Proprietorships use a calendar year for reporting income and losses, making record keeping easier
Any profits of the business are paid directly to the business owner and are not held or retained by the business
The business owner may be entitled to claim certain personal expenses or portions thereof against the income of the business, such as use of their personal vehicle and use of their home for office space.
A proprietorship seldom has any additional reporting requirements, either federally or provincially
A proprietorship can be dissolved or discontinued with little trouble.
Minimal working capital is required to start and operate a Proprietorship

Disadvantages of a Proprietorship

Proprietorships
Unlimited liability is the number one disadvantage. A proprietor is responsible for all debts, obligations and other legal liability arising from damages, suits or other means
A proprietorship must use the Calendar Year for its fiscal period
A proprietorship is based upon the business owner, therefore continuity of the business in the absence of the owner is not often achievable
A proprietorship can have difficulty raising capital, as most lenders will base the credit worthiness of the business upon the business owner's personal credit history. Obtaining a mortgage for the business owner's principal residence can even often prove difficult
A proprietor may have difficulty making decisions that effect the business, whereas a Corporation with shareholders, officers and directors will have many opinions and advice for operating the business

Summary Comparison of Advantages and Disadvantages

Advantages

Corporations	*Proprietorships*
Potential for Tax Deferral	***Easy to setup and establish***
Income splitting with family members	***Offset other income with losses of business***
Dividends for family members	***Easy to report income on personal tax return***
Estate freezes, transfer assets to family	***Extension of personal tax return due dates***
Non taxable benefits available to employees	***Uses a calendar year for reporting***
Tax holidays in some provinces	***Profits paid directly to business owner***
Capital Gains deduction on small business shares	***May claim some personal expenses against business income***
Separate legal entity, limited liability	***Minimal additional reporting requirements***
Continues in perpetuity	***Dissolve or discontinue with little complication***
Greater access to capital and financing	***Minimal working capital to start and operate***
Inc., Ltd. etc. may add credibility to business	
Does not have to use calendar year for fiscal period	

Disadvantages

Corporations	*Proprietorships*
Expensive to startup and register	***Unlimited liability for business owner***
May be subject to additional taxes	***Must use calendar year for fiscal period***
Profits must remain in Corporation for the best tax advantages	***No continuity without business owner***
Losses in the corporation cannot be used to offset other income of the shareholders	***Difficulty raising capital, especially for mortgages or other major purchases***
Potential for double taxation on excess earnings of the Corporation	***Decision making may be more difficult***
Business transfer to a Corporation can trigger hefty taxes	
Strict rules for employee benefits	
Closely regulated, with a lot of additional paper burden	
Directors Liability on certain taxes	
Double taxation of dividends	
Shareholders, offices, directors, additional complications	
Potential for conflict amongst shareholders	

Federal vs. Provincial Incorporation

Within Canada, a business can incorporate either Federally, Under the Canada Business Corporations Act or Provincially under their respective Provincial Corporations Acts. There are distinct differences in the type of incorporation you choose; the following will illustrate the advantages of Federal Incorporation

Name Protection

A business, incorporating Federally will have greater protection of their business name. Although each incorporating jurisdiction in Canada (provinces and territories) screens potential names for conflicts, Corporations Canada applies the most stringent tests when screening names, and the protection offered by incorporating federally is second only to trademark protection.

Location Flexibility

A business, incorporating provincially, must keep the business, records, shareholder meetings etc., within the province of incorporation. A business, incorporating federally, is free to move anywhere within Canada, hold meetings either electronically or in person, and you can even have your meetings outside of Canada.

Credibility

A business incorporating Federally, will potentially have greater credibility when trying to compete in an international market. The 'Canada Inc., or Canada Limited etc. extensions can add perceived weight and size to a business in the eyes of others.

Named vs. Numbered Corporation

Within Canada and the Provinces, a business may incorporate with a name such as Ledgers Canada Inc., or they may incorporate under a number such as 123456789 Ontario Inc., operating as Ledgers Canada. There are distinct advantages and disadvantages to both such as:

Named Corporations

Advantages	***Disadvantages***
Better protection of Name	***Longer Process to obtain certificate of Incorporation***
Immediate recognition of business vs. a business operating as a numbered corporation	***Must complete a NUANS (name search) to ensure the name chosen is not already being used by another business or person***

Credibility, ABC Canada Inc. sounds better to clients and others than would 123456 Ontario Inc., operating as ABC	

Numbered Corporations

Advantages	*Disadvantages*
Quick Registration	***Little or no protection of business operating name unless protected by a trade-mark or other means***
Less costly to register than a named Corporation	***Little recognition of type of business or services provided when corporation name is 132456 Ontario Inc. vs, ABC Paving Company Limited***
	Lessens Prestige and Credibility of Corporation

Choosing a Name

Choosing a name for a Corporation can be perhaps one of the most daunting tasks involved with the incorporation process. Not only should your name properly reflect the type of business, products or services you are offering, but it must meet certain other requirements before it will be approved by the government. Details of the requirements are below:

- The Name of the Corporation must be distinctive
- The Name must not cause confusion with another registered name
- The Name must not infringe on any trade-mark
- The Name must include a legal element
- The Name must not include any unacceptable terms

Distinctiveness

The name you choose must be easy to distinguish between your Corporations and other business carrying out the same services or activities that you will. Your name will not be distinctive if it only tells people what you do such as "Accounting Services Inc.", this definitely tells people what you do, but how are you different from anyone else? The Name "Sam's Accounting Services Inc" would be a better choice.

Another option to make yourself distinct is to make up a word or words about your business, this certainly worked for Xerox, a company that makes photocopiers, but the word "Xerox" now is interpreted as photocopy.

Confusion With Other Names

Before using the name you have chosen for your business, you must ensure that the name does not resemble the name or a trademark of another business offering the same products or services. For example, if you chose the name Review Canada, this could quite easily be confused with Revenue Canada. If you chose a name that was similar to another or infringed on a trademark of another business, the following could potentially happen:

- You could face a legal challenge, leading to serious financial consequences if it is determined that you have caused damage to the name or reputation of the company you infringed upon
- You could be compelled to stop using the name and forced to change names.
- You could incur serious financial burden for replacing letterhead, marketing materials etc., when changing to a new name.

When assessing the risk of possible confusion, the government will look at the following information:

- A comparison of the goods and services you are offering

- The area of operations of your proposed business
- Trademarks and other registrations on file

During the name selection process, it is very important that you choose a number of potential names for your business. If one or more of the names chosen are too similar to that of another business, you can register one of the alternate choices. In any event, it is extremely important, after choosing your names, to obtain a NUANS report (see below for more information) to verify that the name chosen does not infringe on another. The government will require a copy of the report when you are incorporating a named company.

Legal Elements

The legal element of the Corporation Name is to include any one of the following at the end of the Corporation name: Limited, Corporation, Incorporated or abbreviations of them such as: Ltd., Inc., Corp.

Unacceptable Terms

There are three distinct classifications of unacceptable terms that cannot be used in the Corporation name, falling into one or more of the following:

Association with the Government: Under no circumstances may your Corporation name imply that you are a division of, or associated with the Government in any way, shape, or form.

Falsely describes your Business: You cannot for example suggest your company sells cars, when in fact it only sells car parts.

Obscene Terms: This should be quite obvious, however, the company name cannot use obscene terms, a description of an obscene term or act, or any combination of words that may be construed or implied as obscene, immoral, or scandalous.

Other Considerations

- Names may be in English, French or Both
- Occasionally, the Government may request you to obtain a letter of consent from a business using a similar name
- Protect your Name – search regularly and ensure that no other business or person is using a name similar or the same as yours.
- You can use your own Personal Name as the Corporation Name
- You can transfer the name of your proprietorship to a Corporation (providing all other requirements are met)

Registration Requirements for Corporations

Whether incorporating Federally or Provincially, named or numbered, a business is required to gather and report the following information:

Name of Corporation – Named or Numbered

- What name will you use for the corporation?
- Does it properly reflect the type of business you are engaged in?
- Is the name available for use?
- Does the name infringe or sound like a name or trademark of another business?

Head Office of Corporation

The Head Office is the address registered with the government where the business will receive correspondence and other information.

- Where will the Head office be located?
- The Head Office can be a commercial or residential address, but should not be a PO box
- The Head Office is typically the place of business of the corporation
- If the business has more than 1 location, any location may be designated as the Head Office

Shareholders

The Shareholders are the owners of the shares of the Corporation, and as such they are effectively the owners of the business.

- Who will be the Shareholders of the Corporation?
- A Private Corporation may have 1 Shareholder or as many as 50 Shareholders
- The complete Residential address of each Shareholder is required.

Number of Shares Available and Issued

A Corporation may issue as many shares as needed or as desired, however, particular attention must be given to the ratio of total shares issued to the number of shares held by each shareholder. For example, if a Corporation issues each of 2 shareholders 10 shares or 10,000 shares, each shareholder would hold 50% of the outstanding shares of the Corporation. Other considerations:

- It may be advantageous to issue a larger number of shares (10,000 vs. 100) in the beginning, as this would allow for a portion of the shares to be sold at a later date, and in consideration of the total number of shares outstanding, each share would be worth less. Consider this example: A business is worth $75,000. If there are 100 shares outstanding, each share is worth $750. ($75,000 ÷ 100). However, if there are 10,000 shares outstanding, each share is only worth $7.50 ($75,000 ÷ 10,000). It would be much easier to sell shares at $7.50 then it would be at $750.00
- It is very common to see the number of shares issued originally to be 100 or 1,000 you can however increase the amount at a later date.

Directors of the Corporation

As mentioned earlier in this guide, Directors are the individuals who administer and make all of the major decisions of the Corporation. Directors of a Corporation may be just about anybody, subject to the following conditions:

- Every Corporation must have at least 1 director
- There are no limits to the number of directors a Corporation may have, however, the more directors a Corporation has, the more political the decision making process becomes.
- Only individual persons (not other corporations) may be Directors of a Corporation
- A Federal Corporation requires that a minimum of 25% of the Directors be Canadian Residents
- Directors of a Corporation may also be Shareholders and Officers of the same Corporation and other Corporations.
- You must report the principal residence, profession and residency status of all Directors of the Corporation

Officers of the Corporation

As mentioned earlier in this guide, Officers are the individuals responsible for the management and day-to-day operation of the Corporation. The positions held are normally President, Vice-President, Secretary, and Treasurer etc. Any individual may be an Officer of the Corporation, subject to the following conditions:

- Every Corporation must have a President and Secretary
- An Individual may hold more than 1 position, for example, a person could be President and Secretary
- Officers may also be Directors and Shareholders of the Corporation
- There are no residency requirements for the Officers of a Corporation
- You must report the principal residence and profession of each Officer of the Corporation

Fiscal Year End

The Fiscal Year End is the period for which a Corporation reports its earnings and losses. In a Proprietorship the fiscal period must coincide with the calendar year, however, in a Corporation, the Corporation may choose any date for their year-end, subject to the following conditions:

- The Fiscal period may not exceed 12 months
- In the first year of operation, the fiscal period may be less than 12 months.
- A Corporation may change its year-end if the Corporation has good reasons for doing so and receives written approval from the Director of the local tax services office.

Auditors and Accountants

A Corporation must generally approve and appoint an auditor to attest to the fairness and accuracy of the Corporations Books and Records, and to prepare the Annual Financial Statements of the Corporation, subject to the following conditions:

- A Corporation does not necessarily need to have audited financial statements each year, unless required to do so by their lender or other parties. It is advisable however to prepare audited financial statements each year to ensure the financial statements of the Corporation are valid and accurate
- The Auditors should be either: Chartered Accountants, Certified Management Accountants or Certified General Accountants, duly licensed by the governing body of their province to provider the service of Audits and Review engagements.
- The Auditors of a Corporation cannot be shareholders, directors or officers of the Corporation.
- Shareholders may agree to not appoint an Auditor for any fiscal year, however, all shareholders must agree to this decision.
- The appointment of Auditors is only valid for the current fiscal year, and must be voted upon at every annual meeting of the shareholders.

Incorporation Registration Fees

To register a Corporation, there are a number of fees. The following table illustrates the current registration fees for Federal and Provincial Incorporations. Note: this does not include legal fees for incorporation or minute books and other required registrations.

Location	*Basic Registration Fee*
Federal (Canada Inc. Corporation)	***$200.00***
Alberta	***$225.00***
British Columbia	***$352.00***
Manitoba	***$300.00***
New Brunswick	***$260.00***
Newfoundland	***$250.00***
Northwest Territories	***$300.00***
Nova Scotia	***$365.00***
Nunavut	***$300.00***
Ontario	***$360.00***
Prince Edward Island	***$260.00***
Quebec	***$300.00***
Saskatchewan	***$265.00***
Yukon Territory	***$225.00***

Name Search Fees

Location	*Name Search Fee*
Federal (Canada Inc. Corporation)	***$30.00***
Alberta	***$30.00***
British Columbia	***$39.00***
Manitoba	***$30.00***
New Brunswick	***$30.00***
Newfoundland	***$30.00***
Northwest Territories	***$25.00***
Nova Scotia	***$30.00***
Nunavut	***$25.00***
Ontario	***$30.00***
Prince Edward Island	***$30.00***
Quebec	***$50.00***
Saskatchewan	***$60.00***
Yukon Territory	***$40.00***

NOTE: Fees and other requirements change frequently, the fees indicated here are guidelines only and further fees may apply depending upon the province of residence of the Corporation.

There are a number of other fees that may apply to corporations both federally and provincially such as:

- Annual return filing fees
- Patent Registration fees
- Amendments or changes to Articles of Incorporations
- De-registration of a Corporation
- Registration of Extra-Provincial Activities
- Amalgamation of 2 or more Corporations

Fees for the processing of the information required for incorporation, such as Lawyer and Accountant Fees may increase the cost of incorporation significantly. Proper planning and selecting the right professional to assist you with your incorporation could save you a considerable amount of money.

Agreements and Contracts

There are a number of agreements, contracts and other documents that are either required or advisable when operating a business Corporation. The following section will list the required documents as well as the general information contained or recommended within each document.

Articles of Incorporation

The Articles of Incorporation are a series of documents and information, dictating how the Corporation is to be organized, operated and the name of the Corporation, its registered addresses, Directors and other information. Essentially, it is the 'birth-certificate' of the Corporation. The Articles of Incorporation will contain the following information:

Name of the Corporation: - either a name 'ABC Business Inc.' or the number of the Corporation '1234567 Ontario Inc.' as assigned by the appropriate Federal or Provincial Registry

Address of Registered Office: - The PHYSICAL address of the business, this CANNOT be a Post Office Box Number. It can be a Shareholder or a Directors home address.

Number of Directors: - A Corporation may have as many directors as it wishes, however, the number, or minimum and maximum numbers of Directors must be included when incorporating the business.

Directors: - The names, addresses and residency status of ALL directors must be included when filing the Articles of Incorporation.

Restrictions on Business: - A Corporation, within its articles may restrict the types of business or services it may offer through the Corporate Entity by documenting the restrictions or any other conditions it may wish to apply to the business.

Classes and Shares: - The Corporation may define any number of classes and quantities of shares that the Corporation may see fit. When filing the Articles of Incorporation, the classes, and authorized number of shares of each class must be documented. For example, the Corporation may elect to issue an unlimited number of Common Shares but allow for only the issue of 1,000 preferred shares.

Share Rights and Privileges: - The Corporation may attach any number of restrictions, allowances, conditions, terms and other items to the shares issued. For example, a Corporation could allow holders of Class A shares to vote at the Annual General Meetings, while holders of Class B shares may only vote on the election of the Auditors of the Corporation. Class A and B shares may be entitled to receive dividends, while holders of Class C shares are not entitled.

Restrictions on Sale or Transfer of Shares: - The Corporation has the right to restrict or not restrict the sale, transfer or other assignment rights of the shares issued by the Corporation. It is VERY IMPORTANT to consider this area of the Articles very carefully, and with Professional Guidance. A Corporation should generally restrict the sale or transfer of shares in all cases to be voted upon and approved by the Directors of the Corporation. Without restrictions, an individual could theoretically sell their share holdings to a competitor of the business, another individual that the other shareholders may not want to be involved with, or they could assign their shares as collateral against personal debt. Without restrictions, the Corporation could be placed in jeopardy. A basic, recommended guideline in this area would be: ***"No share of the Corporation may be Assigned, Transferred or Sold without the express written consent of all shareholders."***

Other Provisions: - The Corporation may effectively document any other restrictions, conditions, practices, policies or general guidelines that the Corporation wants to have on record. Such provisions may include, the location of the business is restricted to a specific geographic area or the business will only be in operation for a specific time period.

Incorporators: - The name and address of the persons responsible for the initial filing of the Articles of Incorporation must be included.

By-Laws

The By-laws of the Corporation are an agreement between the Corporation and its Shareholders setting out the internal rules and regulations that will be followed by the Corporation. These by-laws generally deal with matters such as Shareholder meetings, financial reporting, financing restrictions etc. The by-laws should include:

Definitions: The definition of the Terms referred to within the by-laws, for example: 'Board' – means the Board of Directors of the Corporation

Directors and Officers: - Should document the following:

- Number of Directors and Officers
- Election Process and their Term of Office
- Calling and Place of meetings
- Notice and delivery of information
- Remuneration and expenses
- Any other information deemed relevant

Shareholders: - This section of the by-laws should document the following:

- When annual and special meetings will be held

- Notice and delivery of information
- Persons entitled to be present
- Voting rights and representation by other persons
- Dividend declaration policy
- Any other information deemed relevant

Execution of Documents: This section should define the following:

- Acceptable methods of delivery (fax. Courier, mail etc.)
- Acceptable methods of signature (original or facsimile etc.)
- Who can execute and legally bind the Corporation

Borrowing: This section needs to identify the following:

- Who may authorize the Corporation to apply for or obtain credit
- Who may issue, sell, or pledge assets of the Corporation to obtain funds
- Who may provide guarantees or other security when obtaining credit
- Restrictions on the amount(s) allowed or types of financing vehicles.

Amendments to the By-laws: This section should define the terms and conditions to which the Corporation is entitled to amend or change the by-laws of the Corporation and should also include:

- Who is entitled to change or amend the by-laws
- The conditions under which the by-laws may be changed, amended or added to
- Who must approve changes to the by-laws and the means for approving changes, such as a vote at the annual meeting or a meeting of the Board of Directors etc.

The by-laws of a Corporation may reflect any policies, rules, guidelines and other information that the Corporation wishes to convey to the Shareholders, Officers, Directors, Managers, and employees of the Corporation or others, without limitation. When creating the by-laws, it is also important to not include too much information, because making changes or amendments may cause more burden than anticipated.

NUANS Reports

The NUANS (Newly Upgraded Automated Name Search) Report demonstrates to the business registry office that you have invested the time and money to ensure that the name you have chosen for your Corporation is not already registered by another person or business, and you have also taken the time to verify, in your opinion that it does not infringe on the trademark rights of another person or business. Other information relating to a NUANS report:

- The NUANS report is a Canadian biased report, meaning, the database search will check your requested name against all names registered in Canada, not just in the province you are applying from.
- The NUANS report is valid for 90 days only, If you do not submit your Application for Incorporation within the 90-day period, you will have to obtain a new NUANS report
- If you submit your Application for Incorporation after the expiration of the 90-day period, without a new NUANS report, the entire application may be rejected.
- A NUANS report is not foolproof; it is very wise to obtain a NUANS report at least annually to ensure that no other business or person has infringed upon the rights of your name.

Shareholders’ Agreement

Perhaps one of the most important contracts for the Corporation to have when there are 2 or more shareholders in the Corporation. Even if the shareholders are spouses, a shareholders agreement is extremely important and should include the following information:

- Term of the agreement – Effective date and provisions for termination of the agreement
- Share ownership – which parties own the shares and the percentage of shares held for which the agreement pertains to.
- Restrictions on sale or transfer of shares
- Withdrawal provisions for shareholders including provisions for:
  - ‘Shotgun’ purchase or sale
  - Bankruptcy of a shareholder and provisions for purchase of shares by other shareholder(s)
  - Death of a shareholder and provisions for purchase of shares by other surviving shareholder(s)
  - Divorce, or breakdown in relationship when 2 or more of the Shareholders are either married or living common-law, and provisions for the purchase of shares by other shareholder(s)
  - Disability of a shareholder and provisions for purchase of shares by other shareholder(s)
- General sale provisions for all or a portion of the shares of the Corporation
- Valuation of shares and procedure for determining business valuation
- Financing provisions and rules for obtaining financing for the Corporation from financial institutions and / or shareholders.
- Non-Competition provisions to be enacted during and after the term of the agreement
- Salaries and Other compensation to be paid or given in consideration to the shareholders, their spouses and / or others
- Dispute resolution policies and procedures
- Any other information deemed or considered relevant by any or all of the shareholders, directors or officers of the Corporation.

Shareholders Agreements do not have to be filed or registered with the government, but all Shareholders, the Corporations Accountants, and the Corporations Legal Counsel should retain a copy.

Other Agreements to Consider

When operating a business, it is important to consider all potential legal problems. By employing the following contracts, you may further protect yourself from litigation or unnecessary aggravation.

Consulting Agreements – If you use consultants in your business for selling or marketing your products and services, installing or maintaining computer systems or for other purposes, you should consider a consulting agreement. The agreement should outline the following:

- Term of Agreement
- Projects or Services to be undertaken or performed
- Fees and/or commissions for services rendered or products sold
- Clear distinction that the Consultant is not an employee of the Corporation
- Geographic Area to be serviced by the consultant (if applicable)
- Responsibilities and efforts required of the consultant
- Clear details of who is responsible for any expenses incurred by the consultant
- Guarantees of services and who is responsible if the work is not performed satisfactorily (if applicable)
- Non-Competition clause if necessary
- Termination provisions for both parties
- Dispute resolution options
- Rights by parties to alter the agreement with approval of all parties

Employment Contracts – Employees can be a huge asset to your business, unfortunately, they may also be a huge burden to the business and the shareholders, officers and directors of the Corporation. The Employment Standards Acts, Labour Laws, and Union Contracts in Canada, give the majority of rights to the employees, while the burden of compliance is left solely in the hands of the management of the Corporation. The number one way to protect yourself and your business is to UNDERSTAND THE LAWS IN YOUR PROVINCE, the number 2 way to protect yourself is with employment contracts. Employment contracts should include the following:

- Term of Agreement
- Probationary Period
- Clearly defined job description
- Chain of command, who is the employee’s immediate supervisor.
- Expected hours of work
- Pay scale and review schedule
- Performance expectations

A clearly defined employment contract may alleviate confusion and misunderstanding in the future. One point of caution though, **under no circumstances may an employee agree to anything that contravenes the Employment Standards Act.**

Corporate Employee Policy and Guidelines

Along with employment contracts, all employees of a Corporation should be required to read and sign that they have read the Corporate employment policies and guidelines. Again, this may save the business a lot of trouble in the future due to misunderstanding. The policies and guidelines should include:

- Hours of Operation of the Business
- Dress Code and Expected compliance
- Vacation times and entitlement rules
- Holidays, (statutory) and the treatment of the same
- Civic Holidays and the treatment of the same
- Pay period frequency and pay dates
- Policy on ‘advances’ and loans to employees
- Deductions (non-statutory) from payroll
- Treatment of ‘Sick’ and ‘Personal’ days
- Disciplinary policies and procedures
- Lunch and Break periods and times
- Hours of Work and Overtime
- Use of Company Property

As with employment contracts, a clearly defined Employee Policy and Guidelines document can save the business undue complications at a later date, and as with employment contracts, **under no circumstances may an employee agree to anything the contravenes the Employment Standards Act**

Books and Records

Rules and regulations for the keeping of books and records vary slightly by province and depend as well on the nature of the business as well as the taxes and other obligations that the business may have. The following section details the general requirements

Who has to keep books and records?

Under the Income Tax Act, the following person/organizations must keep books and records:

- Any person carrying on a business
- Any person who is required to pay or collect taxes or other amounts
- Registered Charities
- Registered Amateur Athletic Associations
- Registered Agents of a registered political party or an official agent for a candidate in a federal election.

Records to be Kept

Under the Income tax act, included as records are: An account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or any other form.

As a general rule, CRA does not specify the records and books to be kept, however, records and books of account have to:

- Permit the taxes payable or the taxes or other amounts to be collected, withheld, or deducted by a person or business, to be determined;
- Substantiate the qualification of registered charities
- Substantiate the qualification of amateur athletic associations
- Permit the verification of all charitable, athletic and political contributions received for which a deduction or tax credit is available
- Be supported by source documents that verify the information in the records and books of account.

Location of Records:

The records and books of account have to be kept at the person's place of business, residence in Canada or another place designated by the CRA Upon request, records must be made available to officers of the

Canada Revenue Agency, Provincial Ministry of Finance and other governing bodies. These records must be available at all reasonable times.

Records and books kept outside of Canada and accessed electronically from Canada are not accepted as records and books of account in Canada. Access to physical records means direct, physical contact to the medium on which the records are stored.

Methods of Keeping Records:

The Canada Revenue Agency recognizes as records and books of account the following:

- The traditional records and books of account, including supporting documents, produced and retained in paper format.
- Records and books produced and retained in an electronically readable format that corresponds to the supporting documents.

All records and books of account that originate in paper format have to be kept except where an acceptable imaging or microfilm program is in place. Paper format includes paper source documents from which data is entered into an electronic record-keeping system.

A person or business that is required to keep records and records them electronically, must keep the electronic (computerized) records even when the paper records are kept.

Responsibilities of Record Keeper:

- Electronic records must show an audit trail from the source documents to the financial accounts. Where no paper records exist, the electronic records, including acknowledgements must be kept.
- A person that keeps electronic records is not relieved of any record keeping responsibilities, even if they contract out the record keeping to a third party such as accountants and bookkeepers.
- A person that uses a third party software solution such as Simply Accounting or QuickBooks is not relieved of responsibility if there are deficiencies in the software.
- When records are converted from one format to another, it is the responsibility of the record keeper to ensure the information is converted correctly.
- The record keeper must ensure that proper back-up records are maintained at all times, if the records are lost, destroyed, or damaged, the person must report this situation to the Director of the local tax office an recreate the records in a reasonable period of time.

Inadequate Records:

If a record keeper fails to keep adequate records and books, the Minister can specify what records or books of account are to be kept.

If CRA finds that records and books of account are inadequate, the Department will ordinarily request a written agreement that books and records be maintained as required. Within a reasonable period of time, generally not less than 1 month, the Department will follow up the request by letter or visit to ensure that the record keeper has complied.

If there has been no compliance within the time allowed, the Department will issue a formal letter. The letter describes the records and books to be kept and the legal consequences and penalties for failing to comply.
Failure to comply with the requirements within the time specified may result in prosecution by the Department.

Penalties for Non-Compliance

If a person fails to comply with the requirements of record keeping, upon summary conviction, CRA can impose a fine of not less than $1,000.00 or both, a fine and imprisonment. This is in addition to any other penalties imposed.

A person who destroys or otherwise disposes of records or books of account to avoid paying taxes is subject to prosecution, under the rules of Tax Evasion.

Minute Book

In addition to records to satisfy the Income Tax Act, a Corporation is also required to keep and maintain a Minute Book. The Minute Book is a record of the history and organization of the Corporation and will include:

- A Copy of the Articles of Incorporation
- All Corporate By-Laws
- Minutes of Shareholder Meetings
- Shareholder Resolutions (changes to by-laws etc.)
- Minutes of Directors Meetings
- Resolutions of Directors (changes to by-laws etc.)
- Directors Register
- Securities Register
- Share Transfer or Sale Register
- Copies of any forms filed with the Government

- Copies of any Shareholders Agreements

There is no specific type of minute book required in fact, a Corporation may use a regular binder if they choose, however, it is useful to have a professional minute book prepared and updated each year to reflect the ongoing business of the corporation. A professionally updated minute book allows for quick organized reference to corporate documents, and is extremely important in a variety of corporate transactions, such as the sale of the corporation to another shareholder. CRA when performing Audits may also request a viewing of the Corporate Minute Book, as will the Auditors of the Corporation.

Corporate Seal

A Corporate Seal is usually a 'press' for marking paper with the 'signature' of the Corporation and is used to authenticate documents. Although a seal is not required in many jurisdictions any longer, it is still advisable to have one when authenticating legal contracts and other similar documents.

Other Registration Requirements

Along with the Articles of Incorporation, NUANS Report, By-Laws and Shareholder Agreements, there are a number of other registrations, filings and records that may need to be established or registered such as:

GST/HST Registration – If the business will be involved in the sale or supply of taxable goods or services, the Corporation must apply for a GST registration number

Retail Sales Tax Permit – If the business will be involved in the sale or supply of taxable goods or services and the province of residence has Retail Sales Tax, then the Corporation will have to apply for a Retail Sales Tax Permit.

Payroll Tax Account – If the business has or anticipates to have employees, then the Corporation must register with CRA and obtain a Payroll Source Deductions Account.

Provincial Health Tax – If the business has or anticipates to have employees, and the province where the business is operating has a Provincial Health Tax, then the Corporation must register with the Province and obtain a Provincial Health Tax Account Number.

Workers Compensation – If the business has or anticipates to have employees, then the Corporation must register with the Provincial Workers Compensation Board and obtain a Workers Compensation account number.

Import / Export Account – If the business is going to Import from or Export to other countries, the Corporation will have to register with CRA for an Import/Export Account number.

Provincial Business Registry – Many Provinces in Canada, along with filing the Articles of Incorporation will require the business to register with the Provincial Business Registry.

Municipal Registry – Many Municipalities (Cities, Towns) may require the Business to register and pay a registration fee.

10 Steps to Success

1. ***Select the Location (Jurisdiction) of your incorporation, either Federal or Provincial***
2. ***Select the Corporate Name(s), either Named or Numbered***
3. ***Request the NUANS Report to ensure the name(s) chosen are available***
4. ***Complete Articles of Incorporation***
5. ***Complete Corporation By-Laws***
6. ***Complete Shareholders Agreements***
7. ***Complete other Agreements necessary***
8. ***Submit and Register Articles of Incorporation***
9. ***Prepare Minute Book and Corporate Seal***
10. ***Register for other required accounts (payroll, tax, GST etc.)***

Your business is ready to go!

This guide was prepared by Ledgers Canada,
to find the Ledgers Representative in your area
and to have your Incorporation Documents professionally prepared, visit http://www.ledgers.com/

Incorporation Checklist

Proposed Name of Corporation and three alternatives. Note that the name must be checked using the NUANS system and must comply with the Business Corporations Act of the jurisdiction you are incorporating in.

Jurisdiction of incorporation. Federal or Provincial

Registered address of the Corporation. Must be located in the jurisdiction of incorporation. A post office box number is not an acceptable address.

Number of directors. You may have one or more directors or set a minimum and maximum number. A range is preferable as it affords more flexibility. Directors must be 18 years of age or over, and not of unsound mind or bankrupt. There are minimum residency requirements that must be met.

Full names (first name, initials and surnames) of the directors together with their home addresses, occupation, SIN and telephone numbers

Description of the activity being carried out under the business name.

Any restrictions you wish to place on the type of business that the corporation proposes to carry on? Normally, the answer to this would be "none".

The classes and any maximum number of shares that the corporation is authorized to issue, and if there is more than one class of shares, the conditions for each class.

Any rights, privileges, restrictions and conditions (if any) attaching to each of shares and directors authority with respect to any class of shares? Normally, the answer to this question would be "none".

Any restrictions on the issue, transfer or ownership of the shares?

Restrictions on share transfer are one of three restrictions required for a company to be a private company. The most common share transfer restriction provides that shares cannot be transferred by a shareholder without the prior consent, by way of resolution, of the board of directors or of a majority of the shareholders.

Any other provisions? To be a private company, you must restrict the number of shareholders in your company to 50 or fewer (not including employees). This is done by adding a clause to this effect in the articles of incorporation.

To be a private company, you cannot offer shares to the public. A clause to this effect must also be in your articles of incorporation.

Provide the names, home addresses and occupations of all of the shareholders, their percentage holdings, number and class of shares issued and share values.

Full names and addresses of the incorporators.

Names, and home addresses of all of the Corporate Officers (including phone numbers)

Name of the financial institution where the corporate bank account will be held.

Corporation year-end.

Everything Small Business Needs…

… One Convenient Location